IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPLICATION NO. 27 OF 2001

The Commissioner of Customs (Preventive) ..Applicant

V/s

M/s. Trade Wings Ltd., Mumbai .. Respondent

Shri. R.V. Desai, Sr. Counsel with Shri P.S. Jetty for the Applicant.

Shri. Ashok Singh for the Respondent.

WITH

CUSTOMS APPLICATION NO. 28 OF 2001

The Commissioner of Customs (Preventive) .. Applicant

V/s

M/s. Nucleus Securities Ltd. .. Respondent

Shri. R.V. Desai, Sr. Counsel with Shri P.S. Jetty for the Applicant.

Shri. Aditya Narayan i/b. M/s. Wadia Ghandy & Co. for the Respondent.

WITH

CUSTOMS APPLICATION NO. 29 OF 2001

The Commissioner of Customs .. Applicant

V/s

Shri. Troy Divecha .. Respondent

Shri. R.V. Desai, Sr. Counsel with Shri P.S. Jetty for the Applicant.

Shri. Madhur Baya for the Respondent.

WITH

CUSTOMS APPLICATION NO. 30 OF 2001

The Commissioner of Customs (Preventive) .. Applicant

V/s

Shri. Abdul G. Merchant .. Respondent

Shri. R.V. Desai, Sr. Counsel with Shri P.S. Jetty for the Applicant.

Shri. Ashok Singh for the Respondent.

WITH

CUSTOMS APPLICATION NO. 31 OF 2001

The Commissioner of Customs (Preventive) .. Applicant

V/s

Shri. K.T. Shah .. Respondent

Shri. R.V. Desai, Sr. Counsel with Shri P.S. Jetty for the Applicant.

Shri. Ashok Singh for the Respondent.

WITH

CUSTOMS APPLICATION NO. 33 OF 2001

The Commissioner of Customs (Preventive) .. Applicant

V/s

Shri. Mahendra Jade .. Respondent

Shri. R.V. Desai, Sr. Counsel with Shri P.S. Jetty for the Applicant.

Shri. Madhur Baya for the Respondent.

WITH

CUSTOMS APPLICATION NO. 34 OF 2001

The Commissioner of Customs (Preventive) .. Applicant

V/s

Shri. Mukesh Himmatlal .. Respondent

Shri. R.V. Desai, with Shri D.A. Dubey for the Applicant.

Shri. Madhur Baya for the Respondent.

WITH

CUSTOMS APPLICATION NO. 35 OF 2001

The Commissioner of Customs (Preventive) .. Applicant

V/s

Shri. Nehalchand Laloochand .. Respondent

Shri. R.V. Desai, Sr. Counsel with Shri P.S. Jetty for the Applicant.

Shri. Madhur Baya for the Respondent.

CORAM : DR.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATE : 10TH JANUARY, 2006.

P.C.:

1. Heard the learned counsel for the Applicants and the learned counsel for the Respondent. Both the learned counsel for the Applicants and Respondent have categorically agreed that in view of the larger bench decision of CESTAT dated 12th August, 2005 in **Weizmann Ltd. & Anr. Vs. CC (Prev.), Mumbai, 2005(126) ECR 282** decision in favour of the Revenue, all the above applications are required to be allowed. These applications have raised following substantial

questions of law :-

1. Whether on the facts, circumstances and the evidence available on record, the Tribunal was justified in holding that if the sale proceeds of smuggled goods have changed form and lost its character, the confiscation of the same cannot be ordered when the available evidence in the case clearly indicates that the cash amounts (i.e. sale proceeds of smuggled gold) was deposited in the fictitious accounts in the bank and from FFMC and the amount lying in the pay order account of the bank were intercepted before the money could be credited to the account of FFMC and the tribunal has itself held that when the money was put into the bank, it was sale proceeds of smuggled gold and therefore the ingredient of Section 121 was satisfied with regard to it ?

2. Whether in the facts and circumstances in the case the Tribunal was justified in holding the penalty imposed on the FFMC's under Section 112 and 114 of the Customs Act, 1962 is not sustainable, when the available evidence indicates that FFMC's consciously dealt and released foreign exchange to apparent fictitious entities and aided smuggling of the goods ?

3. Whether on the facts and in the circumstances of the case the CEGAT was right in law in Setting aside the confiscation and deleting the penalty without appreciating the clinching, evidence and material available on record ?

4. Whether on the facts and in the circumstances of the case the finding of the CEGAT are perverse and unreasonable as they fail to take into account clinching evidence and material available on record ?

2. In view of the above, the Tribunal is directed to send the statement of case to the High Court with regard to the aforesaid substantial questions of law as expeditiously as possible. All the above applications stand disposed of.

(DR.S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR,J.)